IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

WRIT PETITION NO.2968 OF 1999

1. Tata SSL Ltd.,
   a company incorporated under
   the Companies Act, 1956, having
   its Registered Office at
   341, Bombay House, Fort,
   Mumbai-400 001 and inter alia
   a factory at S-76, MIDC,
   Industrial Area, Tarapur,
   Boisar, District: Thane.

2. Mr.Francis J. Dacunha
   of Mumbai Indian Inhabitant,
   being the Director and Share
   Holder of Petitioner No.1
   Company residing at 18 Lalit,
   37, Wood House Road Bombay 39. Petitioners

vs.

1. Union of India
   through the Joint Secretary,
   Law, Finance and Company
   Affairs, Aayakar Bhavan,
   M.K.Road, Churchgate,
   Mumbai 400 020.

2. The Commissioner of Central
   Excise, N-III having his
   office at Nav Bharat Chambers,
   Ranade Road, Dadar, Mumbai
   400 028.

3. The Assistant Commissioner
   of Central Excise, Boisar
   Division, having his office
   at Rishikesh Apartment,
   Boisar Road, Boisar (West),
   District : Thane.

4. The Superintendent of Central
   Excise (Technical), Boisar
   division having his office
   Rishikesh Apartment,
   Boisar Road, Boisar (West),
   District: Thane. Respondents

Mr.M.R.Baya i/b.Mr.M.G.Gawde for the petitioners.

Mr.P.S.Jetley i/b.Mr.R.N.Bandopadhyay for the respondents.

CORAM : R. M. LODHA &
J. P. DEVADHAR,JJ.

DATED : 24th April, 2006

ORAL JUDGMENT (Per R.M.Lodha,J.)

Tata SSL Limited-the first petitioner (hereinafter to be referred to as "the Company") exported consignments of Cold Rolled Sheets and Coils (for short, 'the goods') to Nepal by road. The company got the said goods cleared and removed on payment of excise duty. It is the case of the company that all the subject exports are against free foreign exchange. After the said goods were removed from the factory by the company, it is the case of the company that it realised that instead of clearance on payment of duty, the company ought to have removed the said goods under bond in terms of Rule 13 of the Central Excise Rules, 1944. The company endeavoured to retrieve the said goods and export the same under the bond but the said goods had already crossed the Nepal border. The company made representation to the Assistant Commissioner of Central Excise as well as the jurisdictional of Assistant Commissioner for rebate claims. However, by the letter dated 26th July, 1999 the Superintendent of Central Excise (Technical) rejected the company's rebate claims on the ground that

there was no provision to grant rebate duty of central excise on the goods exported to Nepal under the Central Excise Rules. The Company and one of its directors aggrieved by the communication of the Superintendent of Central Excise (Technical) rejecting their rebate claims have filed the present writ petition.

2. The reliefs claimed in the writ petition may be reproduced as it is :

> "a) that this Hon'ble Court be pleased to declare Notifications bearing Nos.41/94-CE (NT) and 42/94-CE (NT) both dated 22.9.1994 (Exhibit 'A-1' and Exhibit 'A-2' hereto) to the extent the same exclude the exporter of goods to Nepal and Bhutan are ultravires Article 14 and/or Article 19(1)(g) and/or 300A of the Constitution of India.
>
> b) that this Honourable Court be pleased to issue a writ of Mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction, ordering and directing the Respondents, their officers, subordinates, servants and agents(i) to forthwith accept the rebate claim filed by petitioner No.1 (Exhibits 'C' hereto) and sanction the amounts claimed as rebate by Petitioner No.1 together with interest therein at the rate of 15% per annum from the date of filing of the rebate claim till payment to Petitioner No.1 and (ii) to forthwith withdraw and/or cancel the letter dated 26.7.1999 (Exhibit-D hereto)."

3. The company seeks to challenge the constitutionality, legality and validity of the Notification Nos.41/94-CE (NT) and 42/94-CE (NT) both

dated 22nd September, 1994 whereby the rebate of duty paid on excisable goods and material used in the manufacture of export goods to Nepal and Bhutan is excluded.

4. The contention in challenging the constitutionality of the aforesaid notifications is based on the ground of discrimination. The counsel would submit that while no duty is payable to goods exported to Nepal under Bond in terms of Rule 13 of the Central Excise Rules, rebate on excise duty paid at the time of removal of the goods exported to Nepal is not permissible. This is ex-facie discriminatory. He would also submit that by excluding the export of goods to Nepal on payment of duty from receiving rebate on duty paid on the exported goods is discriminatory. It is also the contention of the counsel for the petitioners that notification to the extent they exclude the export of goods to Nepal from the scope of receiving rebate had the effect of imposing unreasonable restriction affecting the company's right under Article 19(1)(g) and being violative of Article 300A of the Constitution of India.

5. The notification no.41/94-CE (NT) dated 22nd September, 1994 reads thus:

> **" Goods exported out of India except Nepal and Bhutan, Extent of rebate and conditions**

specified. 41/94-Ce(NT), dt. 22.9.1994: In exercise of the powers conferred by clause (a) of sub-rule (1) of Rule 12 of the Central Excise Rules, 1944, the Central Government hereby directs that rebate of duty paid, on the excisable goods as specified in the Table annexed hereto, shall on their exportation out of India to any Country except Nepal and Bhutan, be made to the extent specified in column (3) thererof:

(i) the excisable goods shall be exported after payment of duty directly from a factory or a warehouse;

(ii) the excisable goods are exported by the exporter in accordance with the procedure set out in Chapter IX of the Central Excise Rules, 1944;

(iii) the excisable goods shall be exported within six months from the date on which they were cleared for export from the factory of manufacture or warehouse or within such extended period as the Collector of Central Excise may in any particular case allow;

(iv) the claim or, as the case may be, supplementary claims, for rebate of duty is lodged with the Maritime Collector of Central Excise or the Collector of Central Excise having jurisdiction over the factory of manufacture or warehouse, as mentioned in the relevant export documents together with the proof of due exportation within the time limit specified in section 11B of the Central Excises and Salt Act, 1944 (1 of 1944);

(v) the market price of the excisable goods at the time of exportation is, in the opinion of the Collector of Central Excise not less than the amount of rebate of duty claimed;

(vi) the amount of rebate of duty admissible is not less than five hundred rupees;

(vii) the exporter undertakes to refund any rebate of duty erroneously paid, to the Collector of Central Excise sanctioning such rebate in accordance with

provisions of Section 11A of the Central Excises and Salt Act, 1944 (1 of 1944);

(viii) if the excisable goods are not exported or the proof of export thereof is not furnished to the satisfaction of the Collector of Central Excise or, as the case may be, the Maritime Collector of Central Excise in the manner and within the prescribed time limit, the said officer on an application being made by the exporter or otherwise, shall cancel the export documents;

(ix) (a) by land, the export shall take place by such routes or such land Customs Stations or Border Check Posts as have been approved by the Central Government;

(b) by parcel post, the parcel is delivered by the exporter at the Post Office of despatch within six months of the payment of duty;

Provided that rebate of duty on those excisable goods, which are prohibited under any law for the time being in force, shall not be made.

Explanation--"Duty" means for the purposes of this notification, duties of excise collected under the following enactments, namely:-

(a) the Central Excises and Salt Act, 1944 (1 of 1944);

(b) the Mineral Products (Additional Duties of excise and Customs) Act, 1958 (27 of 1959);

(c) the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957);

(d) the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978);

(e) Special excise duty collected under a Finance Act.

S.No.	Excisable goods	Extent of rebate of duty.
	All excisable goods falling under the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), except the following goods--	Whole
(a)	mineral oil products falling under Chapter 27 of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) exported as stores for consumption on board an aircraft on foreign run;	
(b)	goods exported as ships stores for consumption on board a vessel bound for any foreign port."	

7. The other notification No.42/94-CE (NT) again dated

22nd September, 1994 reads thus:

"Rebate of duty paid on materials used in export goods. Extent specified.

42/94-CE(NT). dt. 22.9.1994: In exercise of the powers conferred by clause (b) of sub-rule (1) of rule 12 of the Central Excise Rules, 1944, the Central Government hereby directs that rebate of duty paid on materials used in the manufacture of goods as specified in column (2) of the Table annexed hereto shall, on their exportation out of India, to any country except Nepal and Bhutan, be made to the extent specified in column (3) thereof:

Provided that --

(i) the manufacturer shall file a declaration with the Collector of Central Excise having jurisdiction over the factory of manufacture describing the finished goods proposed to be manufactured along with their rate of duty leviable and manufacturing formula with particular reference to quantity or

proportion in which the materials are actually used as well as the quantity. The declaration shall also contain the tariff classification, amount of excise duty paid on the materials so used, both in words and figures, in relation to the finished goods to be exported;

(ii) the Collector of Central Excise may call for samples of finished goods or may inspect such goods in the factory of manufacture to satisfy himself about the correctness of the ratio of input and output mentioned in the declaration filed before the commencement of manufacture of such goods;

(iii) the manufacturer shall obtain the excisable materials to be utilised in the manufacture and packing of the finished goods intended for export directly from the registered factory in which such goods are produced, accompanied by documents evidencing payment of duty;

Provided that the manufacturer may procure excisable goods from open market;

Provided further that such excisable goods shall be in original packed condition and documents evidencing having duty paid on such excisable goods are furnished;

(iv) the Collector of Central Excise may permit a manufacturer to remove the materials as such or after the said materials have been partially processed during the course of manufacture of export goods to a place outside the factory--

(a) for the purposes of test, repairs, refining, reconditioning, or carrying out any other operation necessary for the manufacture of the final goods and return the same to his factory without payment of duty for further use in the manufacture of export goods or remove the same without payment of duty in bond for export, provided that the waste, if

any, arising in the course of such operation is also returned to the said factory of the manufacture;

(b) for the purpose of manufacture of intermediate products necessary for the manufacture of final product and return the said intermediate products to his factory for further use in the manufacture of final product without payment of duty or remove the same, without payment of duty in bond for export, provided that the waste, if any, arising in the course of such operation is also returned to the factory of manufacture;

(v) the manufacturer shall, mutatis mutandis, follow the procedure set out in Chapter X of the Central Excise Rules, 1944 for procuring materials from the factory of manufacture subject to the conditions that the Collector of Central Excise, may, in writing, waive any or all of the provisions of any rule of that Chapter, if those are considered not necessary and essential in the interest of revenue.

Explanation I--"Duty" for the purposes of this notification means duties of excise collected under the following enactments, namely:--

(a) the Central Excises and Salt Act, 1944 (1 of 1944);

(b) the Mineral Products (Additional Duties of Excise and Customs) Act, 1958 (27 of 1958);

(c) the Additional Duties of Excise (Goods of special Importance) Act, 1957 (58 of 1957);

(d) the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978);

(e) Special excise duty collected under a Finance Act.

Explanation I-- The expressions "manufacture"

and "material" used in the notification shall have the meanings respectively assigned to them in rule 12 of the Central Excise Rules, 1944.

S.No.	Description	Extent of rebate of duty.
(1)	(2)	(3)
1.	Materials used in the manufacture of goods falling under the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) that are exported out of India."	Whole

7. As per rule 12 of the Central Excise Rules, 1944, rebate is allowable in respect of the goods exported on payment of excise duty. Rule 12(2) authorises the Central Government to issue a notification for grant of rebate to the country where the goods have been exported. In exercise of powers conferred upon the central Government by rule 12(2), the Central Government issued notification No.50/94-CE(NT) dated 22nd September, 1994. By the said notification, the rebate of duty paid on any excisable goods, on their exportation from India to Nepal, is granted to His Majesty’s Government of Nepal, on conditions set out therein. On the face of the notification no.50/94-CE (NT), the claim for rebate of duty made by the company was misconceived and could not have been entertained and, therefore, rightly rejected by the authorities.

There is no challenge to the notification No.50/94-CE(NT) dated 22nd September, 1994. Now, during the course of arguments, the counsel for the petitioners submitted that some time may be given to the petitioners to challenge the constitutionality of the notification No.50/94-CE(NT). We are afraid, the submission is in desperation and does not deserve to be entertained.

8. In so far as the challenge to the notification Nos.41/94-CE(NT) dated 22nd September, 1994 and 42/94-CE(NT) dated 22nd September, 1994 are concerned, suffice it to say that the said challenge is wholly misconceived. Both these notifications have been issued by the Central Government under Rule 12(2) as a matter of policy. Notification no.41/94-CE (NT) specifically provides that the goods exported out of India save and except to Nepal and Bhutan shall be entitled to the rebate to the extent specified therein. Thus, notification no.41/94-CE (NT) direct rebate of duty on the duty paid on the exportation made to all destinations save and except Nepal and Bhutan. The matter being that of policy, we hardly find any merit in challenge to this notification. As regards the challenge to the notification No.42/94-CE(NT) dated 22nd September, 1994, suffice it to say that the said notification is also notification that spells out the policy of the Central Government inasmuch as thereby the

Central Government permitted rebate of duty paid on materials use in the manufacture of goods specified in column 2 of Table on their exportation to any country except Nepal and Bhutan. It is within the competence and power of the Central Government to exclude the benefit of rebate of duty to the exportation made to some of the countries. The company seems to have exported the goods to Nepal under the notification No.50/94-CE(NT) on payment of duty which was accepted by the Department. It is not open to the company, having exercised the option by exporting the goods to the Nepal under notification No.50/94-CE(NT), to turn around and challenge the notification Nos.41/94-CE(NT) and 42/94-CE(NT) on the ground of discrimination. As already indicated above, there is no challenge to the notification No.50/94-CE(NT). The notifications 41/94-CE(NT) and 42/94-CE(NT) by no stretch of imagination can be said to be violative of Articles 19(1)(g) and 300A of Constitution of India.

9. Writ petition is wholly misconceived and it is dismissed with no order as to costs.

(R.M.LODHA,J.)

(J.P.DEVADHAR,J.)